

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

State of Minnesota by its Attorney  
General, Keith Ellison,

Plaintiff,

v.

Fleet Farm LLC, Fleet Farm Group  
LLC, and Fleet Farm Wholesale  
Supply Co. LLC,

Defendants.

Case No.: 0:22-cv-02694-JRT-JFD

**ORDER REGARDING  
PRODUCTION OF  
ELECTRONICALLY STORED  
INFORMATION AND PAPER  
DOCUMENTS**

This Order Regarding Production Of Electronically Stored Information And Paper Documents (“ESI Protocol Order”) shall govern the Parties in the above-captioned case whether they currently are involved or become so in the future, and any related actions that may later be consolidated with this case (collectively, the “Litigation”).

**I. GENERAL PROVISIONS**

- A. **Applicability:** This ESI Protocol Order will govern the production of ESI and paper documents.
- B. **Limitations & Non-Waiver:** Nothing in this ESI Protocol Order shall be construed to affect the admissibility of discoverable information. For the avoidance of doubt, a Party’s compliance with this ESI Protocol Order will not be interpreted to require disclosure of information potentially protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.
- C. **Authenticity and Admissibility:** Nothing in this ESI Protocol Order shall be construed to affect the authenticity or admissibility of any document or data. All objections to the authenticity or admissibility of any document or data are preserved and may be asserted at any time.

**II. GENERAL PRODUCTION FORMAT PROTOCOLS**

- A. **TIFFs:** Except for structured data, all production images will be provided as a black-and-white, single-page Group IV TIFF of at least 300 DPI resolution with corresponding multi-page text and necessary load files. Each

image will have a file name that is the unique Bates number of that image, pursuant to ¶ II(E). Original document orientation should be maintained to the extent reasonably practicable and technologically possible for a producing Party's vendor (i.e., portrait to portrait and landscape to landscape). The imaged Data shall retain all attributes of the native or hard-copy file, such as document breaks. Documents that are difficult to render in TIFF because of technical issues, or any other documents that are impracticable to render in TIFF format, may be produced in their native format with a placeholder TIFF image stating "Document Produced Natively." A producing Party retains the option to produce ESI in alternative formats if so agreed by the requesting Party, which may include native format, or a combination of native and TIFF formats.

- B. **Text Files:** Each ESI item produced under this ESI Protocol Order shall be accompanied by a text file as set out below. All text files shall be provided as a single document level text file for each item, not one text file per page.
1. **OCR:** A producing Party may make paper documents available for inspection and copying/scanning in accordance with FED. R. CIV. P. 34 or, additionally or alternatively, scan and OCR paper documents. Even if OCR is used by a producing Party, however, the Parties acknowledge that, due to poor quality of the originals, not all documents lend themselves to the generation of accurate OCR.
  2. **ESI:** Except for redacted documents, emails and other ESI will be accompanied by extracted text taken from the electronic file itself, where available. For redacted documents, Parties shall provide OCR text in accordance with the specifications in Section II.B(1).
- C. **Production of Native Items:** The Parties agree that ESI shall be produced as TIFF images consistent with the format described in section II.A. with an accompanying load file, which will contain, among other data points, the ESI data points listed in Appendix 1 hereto. The exception to this rule shall be spreadsheet-application files (e.g., MS Excel) and multimedia audio/visual files such as voice and video recordings (e.g., .wav, .mpeg, and .avi), for which all ESI items shall be produced in native format upon reasonable request. When producing the above file types in native format, the producing Party shall produce a single-page TIFF slip sheet indicating that a native item was produced. The corresponding load file shall include NativeFileLink information for each native file that is produced. Further, the Parties agree to meet and confer prior to producing native file types other than spreadsheet application files and multimedia audio/visual file types such as .wav, .mpeg and .avi.

**D. Bates Numbering:**

1. All images must be assigned a Bates number that must always: (1) be unique across the entire document production; (2) maintain a constant prefix and length (ten-digits and 0-padded) across the entire production; (3) contain no special characters or embedded spaces, except hyphens or underscores; (4) be sequential within a given document; and (5) identify the producing Party. To the extent reasonably practicable, the Bates number must also maintain consistent numbering across a family of documents.
2. The producing Party will brand all TIFF images at a location that does not obliterate or obscure any part of the underlying images.

**E. Parent-Child Relationships:** Parent-child relationships (the association between an attachment and its parent document) that have been maintained in the ordinary course of business should be preserved to the extent reasonably practicable. For example, if a Party is producing a hard copy printout of an email with its attachments, the attachments should be processed in order behind the e-mail to the extent reasonably practicable. To the extent possible, document families that contain responsive information should be produced in full regardless of whether one or more documents within the family are non-responsive. Privileged documents within a parent-child relationship that are withheld should be identified with a placeholder TIFF image and identified in the Party's privilege log, along with the family of documents for reference.

**F. Linked Files and Collaborative Work Environments.** To the extent a producing party identifies links to other files within a responsive document, it will conduct a reasonable search for such files and attempt to add them to its document productions consistent with the final two sentences of this subsection. A receiving party may also make reasonable and proportionate requests as to specific linked files it identifies within produced documents, and upon such requests, the producing party shall conduct a reasonable search for the document corresponding with the link. If the producing party's reasonable search is successful, it shall process and produce relevant documents corresponding with the link with reasonably available metadata. For documents produced pursuant to this Section, the producing party is not required to conduct any further search of documents corresponding with the links. The provisions of this Section apply to any type of document (including emails, presentations, spreadsheets, and other types of documents). For documents produced pursuant to this Section, the producing party shall produce DOC LINK metadata as defined in Sections D and E of this Appendix 1. Alternatively, for a document where an email has a

hyperlink to another document, the producing party may produce the email with the hyperlinked document as an attachment.

- G. **Load Files:** All production items will be provided with a delimited data file or “load file,” which will include both an image cross-reference load file (such as an Opticon file) as well as a metadata (.dat) file with the metadata fields identified below on the document level to the extent available. The load file must reference each TIFF in the corresponding production. The total number of documents referenced in a production’s data load file should match the total number of designated document breaks in the Image Load files in the production.
- H. **Color:** Documents or ESI containing color need not be produced initially in color. However, if an original document or ESI item contains color markings and it is necessary to see those markings in their original color to understand the meaning or content of the document, then the requesting Party may, in good faith, request that the document or ESI item be produced in its original colors. For such documents, the requesting Party shall provide a list of Bates numbers of the imaged documents sought to be produced in color. The production of documents and/or ESI in color shall be made in single-page JPEG format (300 DPI). All requirements for productions stated in this ESI Protocol Order regarding productions in TIFF format apply to any productions of documents and/or ESI in color made in such an alternative format. Requests that a document be produced in color for the reasons set forth in this ¶ II(I) will not be unreasonably denied by the producing Party. If a producing Party wishes to object, it may do so by responding in writing and setting forth its objection(s) to the production of the requested document in color.
- I. **Confidentiality Designations:** If a particular paper document or ESI item qualifies for confidential treatment pursuant to any applicable federal, state, or common law (e.g., Personally Identifiable Information or Protected Health Information), or to the terms of a Protective Order entered by the Court in the Litigation or a confidentiality stipulation entered into by the Parties, the designation shall be branded on the document’s image at a location that does not obliterate or obscure any part of the underlying images. This designation also should be included in the appropriate data field in the load file. For documents produced in native format with image placeholders, the placeholder image for the native file should be branded with the appropriate confidentiality designation to the extent possible. The designation should also be added to the native filename to the extent possible. Requesting parties shall ensure that the confidentiality claim follows the document regardless of whether the designation imprints on the file when viewed in printed form.

Failure to comply with the procedures set forth in this ESI Protocol Order, any protective order or confidential order, or any confidential stipulation shall not waive any protection or confidential treatment.

- J. **Production Media & Protocol:** A producing Party may produce documents via email, readily accessible computer or electronic media, including CD-ROM, DVD, or external hard drive (with standard PC compatible interface) (“Production Media”), or via file-sharing service, including any network-based secure file transfer mechanism or SFTP. Any requesting Party that is unable to resolve any technical issues with the electronic production method used for a particular production may request that a producing Party provide a copy of that production using Production Media. The producing Party may encrypt Production Media and will provide a decryption key to the requesting Party in a communication separate from the production itself.

### III. PAPER DOCUMENT PRODUCTION PROTOCOLS

- A. **Scanning:** A producing Party may make paper documents available for inspection and copying in accordance with FED. R. CIV. P. 34 or, additionally or alternatively, OCR paper documents. Where OCR is used, the Parties agree that the following ¶¶ III(B)-(E) shall apply.
- B. **Coding Fields:** The following information shall be produced in the load file accompanying production of paper documents: (a) BegBates, (b) EndBates, (c) Custodian, (d) Confidentiality, and (e) Redacted (Y/N) or otherwise indicating that a redaction is present.
- C. **Unitization of Paper Documents:** Paper documents should be logically unitized for production to the extent reasonably practicable. Generally, when scanning paper documents for production, distinct documents shall not be merged into a single record and single documents shall not be split into multiple records. The Parties will make reasonable efforts to unitize documents correctly.
  - 1. **Identification:** Where a document, or a document group – such as folder, clipped bundle, or binder – has an identification spine or other label, the information on the label shall be scanned and produced as the first page of the document or grouping.

### IV. ESI METADATA FORMAT AND PROCESSING ISSUES

- A. **System Files:** ESI productions may be de-NISTed using the industry standard list of such files maintained in the National Software Reference Library by the National Institute of Standards & Technology as it exists at

the time of de-NISTing. Other file types may be added to the list of excluded files if they clearly do not have user-created content.

**B. Metadata Fields and Processing:**

1. **Time Zone:** To the extent reasonably practicable, ESI items shall be processed using a consistent time zone (e.g., GMT), and the time zone used shall be disclosed to the requesting Party.
2. Except as otherwise set forth in this ESI Protocol Order, ESI files shall be produced with the data fields set forth in Appendix 1 that can reasonably be extracted from a document.
3. The Parties are not obligated to manually populate any of the fields in Appendix 1 if such fields cannot reasonably be extracted from the document using an automated process, with the exception of the following fields: (a) BegBates, (b) EndBates, (c) BegAttach, (d) EndAttach, (e) Custodian, (f) Confidentiality, (g) Redacted (Y/N), and (h) NativeLink fields, which should be populated regardless of whether the fields can be populated pursuant to an automated process.

**C. Redaction:**

1. The Parties agree that, where ESI items need to be redacted, they shall be produced solely in TIFF format with each redaction clearly indicated. Any metadata fields reasonably available and unnecessary to protect the privilege protected by the redaction shall be provided. The Parties understand that for certain MS Excel documents or other file types or files, TIFF redactions may be impracticable. These documents may be redacted in native format and the Parties may meet and confer to evaluate effective approaches for implementing such redactions.
2. If the items redacted and partially withheld from production are audio/visual files, the producing Party shall, to the extent reasonably practicable, provide the unredacted portions of the content. If the content is a voice recording, the Parties shall meet and confer to discuss the appropriate manner for the producing Party to produce the unredacted portion of the content.

- D. Email Threading:** The Parties may use email thread suppression to avoid review and production of information contained within an existing email thread in another document being reviewed and produced, but under no circumstances will email thread suppression eliminate (a) the ability of a



requesting Party to identify every custodian who had a copy of a produced document or email, or (b) remove from a production any unique branches and/or attachments contained within an email thread.

- E. **De-duplication:** A producing Party may de-duplicate any file globally (i.e., across Document Custodians, *see infra* ¶ V(B)(1)) at the “family” level (i.e., families should not be broken due to de-duplication). Each party may also de-duplicate emails in such a way as to eliminate earlier or incomplete chains of emails and therefore produce only the most complete iteration of an email chain. Additionally, all BCC recipients whose names would have been included in the BCC metadata field, to the extent such metadata exists, but are excluded because of horizontal/global de-duplication, must be identified in the BCC metadata field specified in Appendix 1 to the extent such metadata exists.
1. Duplicate electronic documents shall be identified by a commercially accepted industry standard (e.g., MD5 or SHA-1 hash values) for binary file content. All electronic documents bearing an identical value are a duplicate group. The producing Party is not obligated to extract or produce entirely duplicate ESI documents.
  2. Duplicate messaging files shall be identified by a commercially accepted industry standard (e.g., MD5 hash values) for the email family, which includes the parent and email attachments. Duplicate messaging materials will be identified at a family level, including message and attachments. Email families bearing an identical value are considered a duplicate group.
- F. **Zero-byte Files:** The Parties may, but are not required to, filter out stand-alone files identified as zero-bytes in size that do not contain responsive file links or file names. If the requesting Party in good faith believes that a zero-byte file was withheld from production and contains information responsive to a request for production, the requesting Party may request that the producing Party produce the zero-byte file. The requesting Party may provide a Bates number to the producing Party of any document that suggests a zero-byte file was withheld from production and contains information responsive to a request for production.
- G. **Embedded Objects:** Microsoft Excel (.xls) spreadsheets embedded in Microsoft Word documents will be extracted as separate documents and treated like attachments to the document. The Parties agree that other embedded objects, including, but not limited to, logos, icons, emoticons, and footers, may be culled from a document set and need not be produced as

separate documents by a producing Party (e.g., such embedded objects will be produced within the document itself, rather than as separate attachments).

- H. **Compressed Files:** Compression file types (i.e., .CAB, .GZ, .TAR, .7Z, and .ZIP) shall be decompressed in a reiterative manner to ensure that a zip within a zip is decompressed into the lowest possible compression resulting in individual folders and/or files.
- I. **Password-Protected, Encrypted, or Proprietary-Software Files:** With respect to any ESI items that are password-protected or encrypted within the scope of review, the producing Party will take reasonable steps to identify the relevant password so that the documents can be reviewed and produced if appropriate.

## **V. CLAIMS OF PRIVILEGE AND REDACTIONS**

- A. **Production of Privilege Logs:** Except as provided otherwise below, for any document withheld in its entirety or produced but redacted, the producing Party will produce privilege/redaction logs in MS Excel format or any other format that permits electronic sorting and searching.
- B. **Exclusions from Logging Potentially Privileged Documents:** The following categories of documents do not need to be contained on a producing Party's privilege log, unless good cause exists to require that a Party do so.
  - 1. Any communications exclusively between a producing Party and its outside counsel, an agent of the producing Party's outside counsel other than the Party, any of the producing Party's non-testifying experts in connection with specific litigation, or, with respect to information protected by Federal Rule of Civil Procedure 26(b)(4), the producing Party's testifying experts in connection with specific litigation.
  - 2. Any communications exclusively between attorneys in the Office of the Minnesota Attorney General or between attorneys in the Office of the Minnesota Attorney General and persons employed by or acting on behalf of the Office of the Minnesota Attorney General.
  - 3. Any privileged materials or work product created by or specifically at the direction of a Party's outside counsel, an agent of outside counsel other than the Party, any non-testifying experts in connection with specific litigation, or, with respect to information protected by Federal Rule of Civil Procedure 26(b)(4), testifying experts in connection with specific litigation.
  - 4. With respect to the Office of the Minnesota Attorney General, any privileged materials or work product created by or specifically at the direction of



attorneys in the Office of the Minnesota Attorney General or persons employed by or acting on behalf of the Office of the Minnesota Attorney General.

5. Any privileged documents or communications created after the filing of the Complaint.

**C. Privilege Log Requirements:**

1. **Metadata Log:** To the extent applicable, each Party's privilege log only needs to provide objective metadata (to the extent it is reasonably available and does not reflect privileged or protected information) and an indication of the privilege or protection being asserted.
  - a. Objective metadata includes the following (as applicable to the document types as shown in Appendix 1):
    - i. A unique privilege log identifier
    - ii. Custodian
    - iii. CustodianOther or CustodianAll (if applicable)
    - iv. File Name
    - v. Email Subject
    - vi. Author
    - vii. From
    - viii. To
    - ix. CC
    - x. BCC
    - xi. Date Sent
    - xii. Date Received
    - xiii. Date Created
  - b. In addition to the objective metadata fields, a Party must also include a field on its privilege log entitled "Attorney/Description of Privileged Material" if the basis for the privilege asserted is not apparent from the objective metadata (e.g., the name of the attorney will be provided if not included in the objective metadata). Further, for any document withheld for which there is no objective metadata, a Party must manually populate on its privilege log an author and date, unless such information is not reasonably discernable from the document or the information is not necessary to evaluate the claim of privilege in light

of the metadata that is discernable and/or the information provided in the Attorney/Description of Privileged Material field.

- c. With respect to the “Email Subject” or “File Name” field, the producing Party may substitute a description of the document where the contents of these fields may reveal privileged information. In the privilege log(s), the producing Party shall identify each instance in which it has modified the content of the “Email Subject” or “File Name” field.
  - d. Should a receiving Party, in good faith, have reason to believe a particular entry on a metadata-generated privilege log is responsive and does not reflect privileged discoverable information, the receiving Party may request, and the producing Party will not unreasonably refuse to create, a privilege log for that entry in compliance with Federal Rule of Civil Procedure 26(b)(5).
2. **Email Chains:** If there is more than one branch of (i.e., more than one unique group of recipients of) an email thread, each branch will be individually logged; however, each individual email within the thread need not be logged if the recipients of the email chain are all identical or if a Party has elected to use threading for review and/or production of emails. A Party asserting privilege over a chain of emails may produce only a single redacted copy of such email chain consistent with ¶ VIII(D) below to the extent some portions are only partially privileged, except that any unique branches of the email chain must also either be produced in redacted form or included on the metadata privilege log.
- D. **Documents Redacted for Privilege:** Redacted documents need not be logged as long as (a) for emails, the objective metadata (i.e., to, from, cc, bcc, recipients, date, and time, unless the privilege or protection is contained in these fields) is not redacted, and the reason for the redaction, including the nature of the privilege asserted, is noted on the face of the document (for redacted documents where the subject matter is not decipherable as a result of redactions, a description of the contents of the document that is sufficient to understand the subject matter of the document may be requested); and (b) for non-email documents, the reason for the redaction is noted on the face of the document in the redacted area. The producing Party will undertake reasonable efforts to make limited, line-by-line redactions of privileged or work product information. After receipt of the production, the requesting Party may request in good faith that the producing Party create a privilege log for specific redacted documents, by Bates number.
- E. **Challenges to Privilege Claims:** Following the receipt of a privilege/redaction log, a requesting Party may identify, in writing (by Bates/unique identification number),

the particular documents that it believes require further explanation and the good-faith basis for such belief.

**VI. MISCELLANEOUS PROVISIONS**

- A. **Variations or Modifications:** Variations from this ESI Protocol Order may be required. Any practice or procedure set forth herein may be varied by agreement of all affected Plaintiffs and all affected Defendants, which will be confirmed in writing. In the event a producing Party determines that a variation or modification is appropriate or necessary to facilitate the timely and economical production of documents or ESI, the producing Party will notify the requesting Party of the variation or modification. Upon request by the requesting Party, those Parties will meet and confer to address any issues in a reasonable and timely manner prior to seeking Court intervention.

SO ORDERED.

Dated: September 13, 2023

s/ John F. Docherty

JOHN F. DOCHERTY

United States Magistrate Judge

**Appendix 1: ESI Metadata and Coding Fields**

| <b>Field Name<sup>1</sup></b>            | <b>Populated For</b><br><i>(Email, Edoc, Calendar, Contact, Cellphone, or All)</i> | <b>Field Description</b>  |
|--|--|---|
| BegBates                                 | All  | Control Numbers.  |
| EndBates                                 | All  | Control Numbers.  |
| BegAttach                                | All  | Control Numbers (First production Bates number of the first document of the family).  |
| EndAttach                                | All  | Control Numbers (Last production Bates number of the last document of the family).  |
| Custodian                                | All  | Custodian name (ex. John Doe).  |
| DupCust, CustodianOther, or CustodianAll | All  | All custodians who were in possession of a de-duplicated document besides the individual identified in the “Custodian” field. |
| LogicalPath                              | All ESI Items  | The directory structure of the original file(s). Any container name is included in the path.                                  |
| Hash Value                               | All  | The MD5 or SHA-1 hash value.  |
| NativeFile                               | All  | Native File Link.   |
| EmailSubject                             | Email  | Subject line of email.  |
| DateSent                                 | Email  | Date email was sent.  |
| DateMod                                  | Email, Edoc  | Date the document was modified.   |
| TimeSent                                 | Email  | Time email was sent.  |
| TimeZoneUsed                             | All  | Time zone used to process data during document collection and processing.   |
| ReceiveTime                              | Email  | Time email was received.  |
| To                                       | Email  | All recipients that were included on the “To” line of the email.  |
| From                                     | Email  | The name and email address of the sender of the email.  |
| CC                                       | Email  | All recipients that were included on the “CC” line of the email.  |
| BCC                                      | Email  | All recipients that were included on the “BCC” line of the email.   |

<sup>1</sup> Field Names can vary from system to system and even between different versions of systems. Thus, Parties are to be guided by these Field Names and Descriptions when identifying the metadata fields to be produced for a given document pursuant to this ESI Protocol Order.

| <b>Field Name<sup>1</sup></b> | <b>Populated For</b><br>( <i>Email, Edoc, Calendar, Contact, Cellphone, or All</i> ) | <b>Field Description</b>  |
|-------------------------------|--|---|
| DateCreated                   | Edoc   | Date the document was created.  |
| FileName                      | Email, Edoc  | File name of the edoc or email.   |
| Title                         | Edoc   | Any value populated in the Title field of the document properties.  |
| Subject                       | Edoc   | Any value populated in the Subject field of the document properties.  |
| Author                        | Edoc   | Any value populated in the Author field of the document properties.   |
| DocExt                        | All  | File extension of the document.   |
| TextPath                      | All  | Relative path to the document level text file.  |
| Redacted                      | All  | “X,” “Y,” “Yes,” and “True” are all acceptable indicators that the document is redacted. Otherwise, blank.  |
| Withheld Placeholder          | All  | To the extent a document is fully withheld (on the basis of privilege or otherwise), this field must be populated with a “Y”  |
| Privilege Asserted            | All  | To the extent a document has been withheld on the basis of privilege or redacted on the basis of privilege, the text pertaining to such assertion of privilege shall be included as a metadata field (e.g., “Redacted – Attorney Client Privileged” or “Withheld – Attorney Client Privileged”) |
| Paper                         | All  | “Y” if document is scanned from hard copy in connection with the collection and production of documents in this matter.   |
| Legend/Confidentiality        | All  | Indicates if document has been designated as “Confidential” or “Highly Confidential” under the Protective Order.  |